

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Alex Cooper,	:	
	:	
Appellant,	:	
	:	C. A. No.: 09A-06-005 (CHT)
	:	
v.	:	
	:	
	:	
Unemployment Insurance	:	
Appeals Board,	:	
	:	
Appellee.	:	

OPINION and ORDER

**Upon Appeal From a Decision of the
Unemployment Insurance Appeals Board**

Submitted: December 22, 2009
Decided: February 9, 2010

Phillip G. Johnson, Department of Justice, Wilmington,
Delaware; Attorney for the Appellee.

Alex Cooper, *pro se*.

TOLIVER, JUDGE

Before the Court is an appeal by Alex Cooper from the decision of the Unemployment Insurance Appeals Board ("Board"). The Board affirmed the determination by the Appeals Referee ("Referee") that Mr. Cooper failed to file a timely appeal, pursuant to 19 *Del. C.* § 3318(b). The Board rendered their decision on May 13, 2009.¹ That which follows is the Court's resolution of the issues so presented.

DECISION OF THE BOARD

On or about September 3, 2008, a decision was rendered by a Claims Deputy determining that the Appellant had collected unemployment benefits fraudulently. According to the findings of the Board, the determination of the Claims Deputy was mailed by first-class mail to the last address on record of Mr. Cooper. That letter was not returned to the Department

¹ The Board's decision was mailed on May 21, 2009, which gave the Appellant, Mr. Cooper, until May 30, 2009 to file an appeal or risk the Board's decision becoming final on May 31, 2009.

of Labor as undeliverable and the final day to appeal the Claims Deputy's decision was September 15, 2008. However, Mr. Cooper did not file his appeal until February 13, 2009. Subsequently, a hearing was held before the Appeals Referee solely on the issue of the timeliness of Mr. Cooper's appeal. That issue was resolved by the Referee against Mr. Cooper when he affirmed the determination of the Claims Deputy.

The Board agreed with and affirmed those decisions and held that Mr. Cooper's failure to file a timely appeal constituted a jurisdictional bar to further proceedings pursuant to 19 Del. C. § 3318(b). The Appellant filed the instant appeal with this Court on September 30, 2009.

DISCUSSION

Standard of Review

This Court's review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence in the

record to support the Board's findings, and that such findings are free from legal error.² Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.³ The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."⁴ An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁵

The Board's decision to accept an untimely appeal *sua sponte* is discretionary.⁶ Therefore, this Court is limited in its scope of review to whether the Board

² *Employment Ins. Appeals Bd. of the Dep't of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

³ *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

⁴ *Geegan v. Unemployment Comp. Comm'n*, 76 A.2d 116, 117 (Del. Super. 1950).

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁶ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991). In *Funk*, the Court noted that the Board may accept an untimely appeal in a case where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal.

abused its discretion.⁷ A procedural decision such as the Board's decision to deny an untimely appeal is not an abuse of discretion unless it is based on "clearly unreasonable or capricious grounds [or] the Board exceeded the bounds of reason in view of the circumstances and ignored the recognized rules of law or practice so as to produce injustice."⁸ Absent an abuse of discretion, the Court must affirm the Board's decision.⁹

Jurisdictional Requirement

Title 19, Section 3318(b), of the Delaware Code provides that unless a claimant files an appeal within ten calendar days after the decision of the Claims Deputy being mailed to his or her last known address on record, the decision shall be final.

The ten day appeal period set forth in § 3318(b) is jurisdictional and neither the Referee nor the Board has

⁷ *Id.*

⁸ *Russell v. Unemployment Ins. Appeal Bd.*, 2000 WL 1211216, at *2 (Del. Super. May 31, 2000) (quoting *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super. March 23, 1995)).

⁹ *Funk*, 591 A.2d at 225.

the power to accept an appeal filed by a claimant beyond the appeal period.¹⁰ "Where the lateness of the appeal is due to the claimant's unintentional or accidental actions, and not due to an administrative error, the Claims Deputy's determination will become final and § 3318(b) will jurisdictionally bar the claim from further appeal."¹¹

In this instant action, the Board concluded that Mr. Cooper's appeal of the Claims Deputy's decision was untimely because he filed his appeal beyond the ten day appeal period set forth in 19 Del. C. § 3318(b). The record shows that Mr. Cooper did not file his appeal until February 13, 2009, which was almost five months after the expiration of the appeal period. Furthermore, the record also reflects that the Department of Labor properly fulfilled their duties by mailing the determination to Mr. Cooper's address of record.

¹⁰ *Crawford v. Unemployment Ins. Appeal Bd.*, 1999 WL 458725, at *2 (Del. Super. June 18, 1999) (citing *Rosembert v. Perdue Inc.*, 1996 WL 662988, at *3 (Del. Super. Sept. 12, 1996)).

¹¹ *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. April 5, 2004).

Consequently, there is substantial evidence on the record to support the Board's conclusion, and the Court finds that it is free from legal error.

Notwithstanding that conclusion, pursuant to 19 Del. C. § 3320, the Board has the power to hear a late appeal *sua sponte* in cases where there has been some administrative error which deprived the claimant of the opportunity to file a timely appeal. That authority also includes situations when the interests of justice would not be served by inaction.¹² However, as the Delaware Supreme Court has noted those such situations "have been few and far between."¹³

It is readily apparent that the instant action does not meet that threshold. Simply put, there is no evidence of any administrative error on the part of the Department of Labor in sending the notification to Mr. Cooper's last known address. Nor does the Court find that these circumstances otherwise rise to a level where

¹² See *Sheppard v. GPM Investments, LLC*, 2008 WL 193317, at *2 (Del. Super. Jan. 23, 2008).

¹³ See *Funk*, 591 A.2d 222 (Del. 1991).

the Board should have acted in the interests of justice.

CONCLUSION

For the foregoing reasons, the appeal filed by Mr. Cooper is denied, and the decision of the Unemployment Insurance Appeals Board is **affirmed**.

IT IS SO ORDERED.

TOLIVER, JUDGE